

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
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In re:

Case No.
Chapter

_____ Debtor(s) _____ /

**ORDER GRANTING SELF-REPRESENTED DEBTOR'S
VERIFIED MOTION FOR REFERRAL TO MORTGAGE MODIFICATION MEDIATION**

This matter came on for hearing before the Court on _____, on the Self-Represented Debtor's Verified Motion for Referral to Mortgage Modification Mediation ("*Pro Se* Motion") for Debtor's real property located at _____ (street address). The *Pro Se* Motion was served on _____ ("*Lender*") on _____. The Court, having reviewed the *Pro Se* Motion and considered the record in this case, it is:

ORDERED:

1. The *Pro Se* Motion is granted.

2. The Debtor and Lender are required to participate in Mortgage Modification Mediation (“MMM”) in good faith. MMM shall be completed no later than 150 days from the date of this Order, unless extended by written consent on the approved Mortgage Modification Mediation Portal (“MMM Portal), by stipulation of the parties or by court order.
3. The Debtor’s request to be excused from using the MMM Portal is
 Granted Denied.
4. All communications and information exchanged during MMM conference are subject to the provisions of Federal Rule of Evidence 408.
5. All written communication between the parties regarding the mediation must be sent through the MMM Portal only, unless otherwise ordered by the Court. Any litigated matters incidental to the mediation shall be considered as separate matters and not subject to the portal communication requirement. If the MMM Portal is not being used because the Debtor has been excused under paragraph 3 above, then all communications shall be by phone and/or in writing.
6. The Lender shall register with the MMM Portal, unless already registered, within seven days after entry of this Order, and designate its single point of contact and outside legal counsel who must register within seven days after designation. If the Lender fails to register, the Debtor may file a motion with the Court seeking sanctions against the Lender for Lender’s failure to register. If Debtor has been excused from the portal

requirement, the Lender shall provide phone and written notice to the Debtor and the mediator.

7. Lender's counsel or representative shall have the authority (within the investor's guidelines) to settle and will attend and continuously participate in all MMM conferences in this case.
8. If the Lender transfers the loan, the Lender must provide a copy of the Order to the new holder of the loan ("Successor Lender"), and the Successor Lender will be obligated to comply with all terms of this Order.
9. Debtor shall,
 - a. within seven days after entry of this Order, remit to the MMM Portal the required non-refundable MMM Portal submission fee in the amount \$60.00, and upload to the MMM Portal the following (collectively, the "Completed Package"):
 - (1) Debtor's loan modification package (prepared using the Document Preparation Software);
 - (2) a copy of this Order; and
 - (3) any additional lender-specific information identified by Lender on the MMM Portal.

OR if excused from electronic filing,

- b. The Debtor shall, within seven days of the date of this Order, mail or fax to the Lender the following:
 - (1) Debtor's Prepared Package (as defined in the Verified *Pro Se* Motion);

- (2) a copy of this Order; and
- (3) any additional lender-specific information identified by Lender in its written instructions to the Debtor.

10. PROCESS FOR SELECTION OF MEDIATOR:

- (a) The parties shall have 14 days from the date of this Order to select a mediator. If the parties agree on the selection of a mediator, the Debtor shall file the MMM Local Form "Debtor's Notice of Selection of Mortgage Modification Mediator" (Check Box 1 and insert mediator name and contact information), serve a copy of the notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F).
- (b) If the Lender fails to communicate with the Debtor within the 14 day period established for the mediator selection process, the Debtor shall, within seven days, independently select a mediator and file the "Debtor's Notice of Selection of Mortgage Modification Mediator" (Check Box 2 and insert mediator name and contact information), serve a copy of the notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F). In this instance, it shall be deemed that the Lender has waived the right to challenge Debtor's selection of a Mediator.
- (c) If the parties attempt to reach agreement on the selection of a Mediator, but fail to do so, the Debtor shall file the "Debtor's Notice of Selection of Mortgage Modification Mediator" (Check Box 3

indicating an impasse), serve a copy of the notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F). The clerk shall then randomly select a mediator from the clerk's Mediation Register pursuant to Local Rule 9019-2(B)(3), without the necessity of a hearing. The clerk shall serve notice of the mediator selection on the required parties using the MMM Local Form "Notice of Clerk's Designation of Mortgage Modification Mediator". Local Rule 9019-2(B) shall apply to any challenge to the clerk's designation of mediator.

11. Debtor shall assign the mediator as the mediator in this case on the MMM Portal within seven days after designation. If the Debtor is excused from using the MMM Portal, the Debtor shall serve this Order on all parties to the mediation.
12. The Debtor's request for *pro bono* mediation is Granted Denied. The mediator shall notify the Court, and the Debtor immediately, by motion if the mediator is not willing to serve *pro bono* and state in the motion to be excused from *pro bono* mediation, the reasons why the mediator seeks to be excused.
13. The mediator shall be governed by the standards of professional conduct set forth in the Florida rules for certified and court-appointed mediators and shall have judicial immunity in the same manner and to the same extent as a judge.

14. The mediator shall be compensated in the amount of \$600.00 for preparation for MMM, execution of required documents, facilitation of document and information exchange between the parties, and participation in no more than two one-hour MMM conferences. The mediator shall be compensated at the rate set by this Court's Local Rule 9019-2(6) for any MMM conferences that extend beyond the initial two, one-hour conferences; however, the mediator, by accepting the *pro bono* assignment, agrees to accept \$400.00 from the Lender as full payment for the initial mediation services.
15. The mediator's fee shall be paid equally by the parties as follows:
- a. The Debtor shall pay a non-refundable fee in the amount of \$400.00 directly to the mediator within seven days after designation BY CASHIER'S CHECK OR MONEY ORDER;
- OR**
- The Court finds that the Debtor qualifies for a mediator *pro bono*. The mediator shall notify the Court and the Debtor immediately by motion if the mediator is not willing to serve *pro bono* and state in the motion to be excused from *pro bono* mediation, the reasons why the mediator seeks to be excused.
- b. The Lender shall pay a non-refundable fee in the amount of \$400.00 directly to the mediator within seven days of designation.
- c. The mediator's fee for MMM conferences that extend beyond two, one-hour conferences, shall be paid equally by the parties (unless

the Debtor is receiving *pro bono* mediation, in which case the Lender shall pay its half) and is due and payable at the beginning of each successive MMM conference in accordance with the program procedures.

16. The mediator shall log in to the MMM Portal:
 - a. within seven days after designation and use the MMM Portal to facilitate the exchange of information and documentation between Debtor and Lender in an effort to perfect the documentation needed for Lender to complete its analysis of Debtor's Mortgage Modification options. Failure of the mediator to either timely register or log in to begin to facilitate the MMM process shall render the mediator ineligible to serve as a mediator for a period of one year, and his or her name, if applicable, will be removed from the clerk's Mediation Register.
 - b. If the Debtor is not using the MMM Portal because the Debtor is excused from electronic filing, sub-paragraph 16.a. above shall not apply; instead the mediator will be required to contact the Debtor at the phone number listed in the *Pro Se* Motion and contact the Lender when the mediator receives the Lender's contact information.
17. In the event the Lender requires additional information to consider the Debtor's requested mortgage modification options as specified in the *Pro Se* Motion, the Lender shall:

- a. notify Debtor through the MMM Portal within seven days of Debtor's submission ("Notice"). The Debtor shall provide all additional documents through the MMM Portal within seven days of the Notice, **OR**
 - b. If the Debtor is excused from electronic filing and the MMM Portal is not being used, the Lender shall mail the Debtor a notice of additional documents required no later than seven days after the Debtor has provided Lender with the Debtor's Prepared Package.
18. The mediator shall schedule the initial MMM conference no later than seven days after determining that the Lender has received and reviewed all requested information. In the event the mediator cannot determine that the Lender has received all the requested information, the mediator shall schedule the initial MMM conference within 90 days after entry of this Order. The initial MMM conference shall not exceed one hour. The mediator shall report the scheduling of all MMM conferences on the MMM Portal, or, if the MMM Portal is not being used, by U.S. Mail.
 19. The Lender and Lender's representative may participate in the MMM conference by telephone.
 20. **BECAUSE THE DEBTOR IS NOT REPRESENTED BY AN ATTORNEY, THE DEBTOR AND ANY CO-BORROWER SHALL BE PHYSICALLY PRESENT WITH THE MEDIATOR AT THE MEDIATOR'S SELECTED LOCATION AND PRESENT IDENTIFICATION TO THE MEDIATOR FOR ALL MMM CONFERENCES.**

21. The Debtor shall provide a foreign language interpreter, if necessary, at the Debtor's own expense.
22. All parties attending the MMM conference must be ready, willing and able to sign a binding settlement agreement at the MMM conference and have the ability to scan, send and receive documents by facsimile, email or other electronic means at the time of the MMM conference.
23. In the event the parties are unable to reach an agreement and require an additional MMM conference, the mediator shall schedule a final MMM conference no later than 30 days thereafter. The final MMM conference shall not exceed one hour.
24. In the event the parties reach a final resolution or, if no agreement has been reached, the mediator shall, if the MMM Portal is being used, report the results of the MMM on the Portal not later than seven days after the conclusion of the MMM conference. The mediator shall also prepare and file with the Court, the MMM Local Form "Final Report of Mortgage Modification Mediator" ("Final Report") not later than two business days following entry of the "Final Report" data on the MMM Portal.
25. If applicable, the Debtor shall file the MMM Local Form "Self-Represented Motion to Approve Mortgage Modification Agreement with Lender", no later than 14 days following the Final Report. The parties shall also seek any necessary court approval and formalize any required legal documents in a timely fashion thereafter.

26. The automatic stay is modified to the extent necessary to facilitate MMM pursuant to this Order.
27. [For chapter 7 debtors] Notwithstanding that the Debtor may be eligible for entry of a discharge before the MMM process is completed, the Court shall delay issuance of the discharge until either an agreement is reached or the parties reach impasse as reflected in the Local Form "Final Report of Mortgage Modification Mediator".
28. Any of the deadlines imposed by this Order may be extended by order of the Court.
29. The Court may impose sanctions against any parties or counsel who do not comply with the terms of this Order.
30. The Debtor shall serve a copy of this Order on all parties to the mediation.

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Copies furnished to: